

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

TIDEWATER BARGE LINES, INC., as )  
demise owner of the barge BIG BIN, )  
  )  
  )  
Plaintiff,                         )      Case No. 03-1225-ST  
  )  
  )  
vs.                                 )      ORDER  
  )  
  )  
In a cause for exoneration from or )  
limitation of liability.             )  
  )  
  )  
CP SHIPS, LTD., ITALIA di         )  
NAVIGAZIONE, S.p.A, CONTSHIP     )  
CONTAINER LINES, LTD., AUSTRALIA-)  
NEW ZEALAND DIRECT LINES, and    )  
TMM LINES, LTD.,                    )  
  )  
Third-Party Plaintiffs,            )  
  )  
vs.                                 )  
  )  
THE PORT OF LEWISTON, an Idaho )  
municipal corporation, THE PORT OF )  
PORTLAND, an Oregon municipal    )  
corporation, and MARINE TERMINALS )  
CORPORATION, a Nevada corporation, )  
  )  
Third-Party Defendants,            )

and )  
 )  
THE PORT OF PORTLAND, an Oregon )  
municipal corporation, and MARINE )  
TERMINALS CORPORATION, a Nevada )  
corporation, )  
 )  
Claimants/Third Party )  
Defendants. )  
\_\_\_\_\_  
 )  
TRANSCO FOOD TRADING, INC. and )  
ACE INA INSURANCE, )  
 )  
Third-Party Plaintiffs, )  
 )  
vs. )  
 )  
THE PORT OF LEWISTON, an Idaho )  
municipal corporation, THE PORT OF )  
PORTLAND, an Oregon municipal )  
corporation, and MARINE TERMINALS )  
CORPORATION, a Nevada corporation, )  
 )  
Third-Party Defendants. )  
\_\_\_\_\_  
 )  
BNP LENTIL COMPANY, and CERTAIN )  
UNDERWRITERS AT LLOYD'S OF )  
LONDON, INSURANCE, )  
 )  
Third-Party Plaintiffs, )  
 )  
vs. )  
 )  
THE PORT OF LEWISTON, an Idaho )  
municipal corporation, THE PORT OF )  
PORTLAND, an Oregon municipal )  
corporation, and MARINE TERMINALS )  
CORPORATION, a Nevada corporation, )  
 )  
Third-Party Defendants. )  
\_\_\_\_\_ )

KING, Judge:

The Honorable Janice M. Stewart, United States Magistrate Judge, filed Findings and Recommendation on November 30, 2005. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Third-party defendant Port of Lewiston filed objections to the Findings and Recommendation. Third-party plaintiffs Transco Food Trading, Inc., Ace INA Insurance, BNP Lentil Company and Certain Underwriters at Lloyd's of London (collectively "shippers-customers") have filed a response to the objections. In addition, third-party defendants City of Portland and Marine Terminals Corporation have filed a response to the objections. Port of Lewiston has filed a reply.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issues raised in petitioner's objections to the Findings and Recommendation, I find no error.

Specifically, the Port of Lewiston objects to Magistrate Stewart's statement that the shippers-customers "allege, but without offering any evidence, that they were intended beneficiaries of any contract between CP Ships and the Port of Lewiston . . ." Findings and Recommendation, at 22. The Port of Lewiston contends that such a statement appears nowhere in the shippers-customers' pleadings or in the concise statements of material facts. In addition, the Port of Lewiston argues that the shippers-customers did not directly assert that they were beneficiaries in their summary judgment memorandum. However, the shippers-customers state

in their summary judgment memorandum, “It also is clear that the shippers were intended beneficiaries of any contract between CP Ships and the Port of Lewiston for the loading of those shippers’ goods aboard the BIG BIN . . .” Memorandum by Claimants Transco, [et al] in Opposition to Port of Lewiston’s Motion for Summary Judgment, at 8. Accordingly, Magistrate Stewart properly discerned from the memorandum that the shippers-customers were arguing they were third-party beneficiaries. I adopt Magistrate Stewart’s remaining conclusion that there is sufficient evidence “at this juncture” to deny the Port of Lewiston’s motion for summary judgment on this issue.

Accordingly, I ADOPT Magistrate Judge Stewart’s Findings and Recommendation (#210) and DENY the Port of Lewiston’s Motion for Summary Judgment, as amended (#151, #158).

IT IS SO ORDERED.

Dated this       8th       day of February, 2006.

/s/ Garr M. King  
Garr M. King  
United States District Judge